

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Ananya Bandyopadhyay

**C.R.R. 1357 of 2013
With
CRAN 16 of 2022
Gan Nayak Pathak
-Vs-
The State of West Bengal and Anr.**

For the Petitioner	: Mr. Sabyasachi Banerjee Mr. Apalak Basu Mr. Cedric Fernandez Mr. Minal Palan
For the State	: Mr. Ranabir Roy Chowdhury Mr. Mainak Gupta
Heard on	: 31.01.2023, 01.02.2023
Judgment on	: 28.04.2023

Ananya Bandyopadhyay, J.:-

1. The Additional Director General and Chairman, Fire Safety Audit Committee, West Bengal Fire and Emergency Services lodged a complaint dated 23.12.2011 against the petitioner being a staff of Kothari Medical Centre situated at 8/3, Alipore Road, Kolkata-700027 for violation of the provisions enunciated in Section 11(C) of West Bengal Fire Services Act, 1950 with up to date amendment. The complaint precisely stated the aforesaid Kothari Medical Centre to initiate functioning without obtaining of N.O.C from the Fire Service Department.

2. On an inspection on 20.12.2011 infringement of the provisions of Section 11(C) of West Bengal Fire Services Act as aforesaid was noticed. Fire prevention and Fire Safety measures to combat the hazards associated with the aforesaid medical centre could not be established.
3. The specified violations entailed cognizable offence punishable under Section 11L and 11J of the aforesaid Act. Accordingly, the complaint was lodged against the petitioner and the other appropriate authorities of the said Medical Centre in the interest of public policy.
4. Based on the above complaint Alipore PS Case No. 388 dated 23.12.2011 was registered for investigation. On completion of the investigation the police authorities submitted a Charge Sheet being No. 73 dated 07.04.2012 implicating the petitioner along with another under Section 11 (J)/11 (L) of the West Bengal Fire Services Act, 1950. Subsequently warrant of arrest was issued against the petitioner. The petitioner was subsequently granted bail vide order dated 18th April, 2013 passed by the Court of Learned Chief Judicial Magistrate, South 24 Parganas at Alipore.
5. The instant criminal revisional application has been filed to seek quashing of the impugned proceedings of C.G.R. Case No. 4730/2011 pending before the Learned Chief Judicial Magistrate, South 24 Parganas at Alipore arising out of Alipore PS Case No. 338 dated 23.12.2011 along with the order dated 11th April, 2013 passed therein.
6. The Learned Advocate for the petitioner submitted, the petitioner had been an employee of Gillanders Arbuthnot & Co. Ltd. since 13.03.89

which had its registered office at C-4, Gillander House, Netaji Subhas Road, Calcutta – 700012. The petitioner was never associated with the affairs of the Kothari Medical Centre as aforesaid. It was further submitted that Chapter (III)(A) of the West Bengal Fire Services Act, 1950, a subsequent legislation which came into effect from 01.11.1996 could not be invoked in the instant case.

7. It was further contended in order to prove violation of the provisions of Section 11C of the said Act, 1950, the building in question must be a high risk building, duly designated by the Government within the meaning of clause (hb) of Section 2 of the said Act. In case the building existed prior to 01.11.1996 (the date on which Chapter IIIA was introduced into the said Act), it was incumbent on the part of the Investigating Authority to issue a notice, in terms of Section 35 of the said Act to be duly served upon the delinquent owner/occupier. However such notice was not issued. The First Information Report and the Charge Sheet of the proceedings as impugned revealed both the essential requirements with regard to violation of Section 11C of the said Act had not been complied with by the Investigating agency and as such, the accusation of an offence under Section 11J of the said Act committed by the petitioner was unsustainable.
8. It was further submitted that this Hon'ble Court in the case of ***Prem Swarup Sharma & Anr. Vs. The State of West Bengal***¹ dealt the question of commission of offence under Section 11J of the said Act vis-

¹ {2009} 1 C.Cr.LR [Cal] 424

à-vis Section 35 of the said Act. It was held that the purpose of service of notice under Section 35 of the said Act was to intimate the owner or occupier about the legal necessity to comply with the direction contained therein and unless such notice was served, the question of complying with the direction did not arise. It was further held that when no notice was served, specifying the measures to be taken, the question of non-compliance of the same leading to institution of criminal prosecution did not arise. The materials collected in course of investigation of Alipore Police Station Case No. 388 dated 23.12.2011, as reflected in the Charge Sheet submitted therein, do not indicate that any notice, in terms of Section 35 of the said Act, had been issued in favour of Kothari Medical Centre and in such circumstances, the instant prosecution for violation of Section 11C of the said Act was untenable. The Petitioner has been arraigned in his capacity as an officer of Kothari Medical Centre, as an accused on the basis of the post held by the petitioner in the Company/Society, which runs Kothari Medical Centre. Arraignment of officials of a delinquent Company as accused, by virtue of the principle of vicarious liability, has been delineated under Section 33 of the said Act, which is akin to Section 141 of the Negotiable Instruments Act. However, it has been well settled through pronouncements of the Hon'ble Supreme Court of India as also Hon'ble High Court at Calcutta that persons who were in charge of and were responsible to the company for conduct of the business of the company, shall be brought within the scope of penal consequences. The petitioner herein had been impleaded as an accused

on the basis of the purported post held by the petitioner without specifying as to how and in what manner the petitioner was responsible for the day-to-day functioning of Kothari Medical Centre. Moreover, the petitioner was neither the owner nor the occupier of the said building and in the absence of prosecution of the owner/occupier of Kothari Medical Centre, impleading of the petitioner, who was only an officer of the owner of Kothari Medical Centre, could not be sustained and in such circumstances, the impugned proceeding was liable to be quashed.

9. The Learned Advocate for the State submitted a letter with the recommendation towards Fire and Life Safety for the aforesaid hospital had been issued vide Memo. No. WBFS/706/Cal-B/428/82 dated- 04.02.1983, at the time of construction of the said hospital. However, the said medical hospital commenced functioning after construction without informing Fire Brigade Authority regarding compliance of Fire and Life Safety recommendation and without attaining N.O.C. from the Fire Service Department. In the mean time two major fire incidents occurred on 21.07.2010 and 31.01.2011 respectively. Nearly 60 patients from 8th floor and 9th floor were to be evacuated due to intensified fire on the second occasion. In spite of the above incident the hospital authority reluctantly and negligently did not obtain N.O.C from the Fire Service Department.
10. The Fire Safety Audit Committee as constituted by the Govt. of West Bengal, inspected the said hospital on 20.12.2011 and observed major violation and non-compliance in providing Fire and Life Safety Measures.

11. As the hospital authority failed to produce any N.O.C and Fire License under Section 11C and 12 of West Bengal Fire Service Act, 1950 with upto date amendments on 20.12.2011 i.e. at the time of inspection and found gross deviation and wilful negligence of the authority regarding Fire and Life Safety matters almost in all areas being constrained the complaint was lodged.
12. The FIR No.388 dated 23.12.2011 delineates the reporting of First Information of a cognizable offence under Section 154 of the Code of Criminal Procedure at the police station. The complainant in the capacity of Additional Director General & Chairman, Fire & Safety Audit Committee, West Bengal, Fire and Emergency Service lodged the complaint against (i) Mr. T.K. Chatterjee, General Manager (Operation), (ii) G.N. Pathak (Joint President) both of Kothari Medical Centre, 8/3 Alipore Road, Kolkata-27 and other appropriate authorities of Kothari Medical Centre for gross negligence and violation of the provisions under Section 11C of the said Act punishable under Section 11J and 11L of the West Bengal Fire Services Act, 1950 (with up to date amendment).
13. The primary question to be determined is to whether the petitioner being an officer of a medical hospital can be distinctively, individually or vicariously liable for any wrongful act or actionable omission on the part of the hospital as aforesaid i.e. Kothari Medical Centre which is in the form of a company/society.
14. Section 11 (C) of the aforesaid Act imposes a duty on the owner or occupier of high risk building to provide fire prevention and fire safety

measures in such building or part thereof and the occupier has also been imposed with the duty to maintain such fire prevention and fire safety measures efficaciously.

15. Provision to Sub Section (1) of Section 11C of the said Act however stipulates that in case of a building, the construction of which had been completed on any date before the date on which Chapter IIIA came into force, the occupier or owner shall undertake and carry out such additional fire prevention and fire safety measures as are specified in the notice served on him under Section 35 of the said Act.
16. Section 11(C) of the West Bengal Fire Services Act states as follows :-

Section 11C. Owner or occupier of high-risk building to provide fire prevention and fire safety measures.-(1) *The owner or, where the owner is not traceable, the occupier of a high-risk building or part thereof shall provide fire prevention and fire safety measures in such building or part thereof and the occupier shall maintain the fire prevention and fire safety measures in good repair and in efficient condition at all times in accordance with the provisions of this Chapter or the rules made thereunder :*

Provided that in the case of such building or part thereof, the construction of which has been completed on any date before the date on which this Chapter comes into force, the occupier and, in the case of such building or part thereof which is under construction on the date immediately before the date on which this Chapter comes into force, the owner shall undertake and carry out such additional fire prevention and fire safety measures as are specified in the notice served on him under section 35.

(2) The owner or occupier of a high-risk building, as the case may be, shall obtain from the Director-General or the nominated authority a "Fire Safety Certificate" in the prescribed form issued by a licensed agency in the manner prescribed.

(3) The State Government may require compulsory endorsement of "Fire Safety Certificate" by the Director or by a

superior nominated authority in respect of any class or classes of high-risk buildings as may be notified by the State Government from time to time:

Provided that the Director or a superior nominated authority shall not endorse any "Fire Safety Certificate" unless he or it is satisfied about the fire prevention and fire safety measures including safety of electrical installations [, structural means of escape from where owner or occupier can evacuate the buildings or place to a place of safety at the time of fire emergency] and provision of supply of adequate quantity of water for fighting purposes made by the owner or occupier of such building.

[(3A) A "Fire Safety Certificate" issued under sub-section (2), shall remain valid for a period of three years with effect from the date of issue of such "Fire Safety Certificate".

(3B) The owner or occupier of the high-risk building or any authorized person, as the case may be, shall submit an application for renewal of "Fire Safety Certificate" in such manner, and on payment of such fees, as may be prescribed.]

(4) The occupiers of all high-risk buildings shall carry out a mock fire drill involving the watch and ward staff of such buildings every year under intimation to the Director or the nominated authority in such manner as may be prescribed and a certificate of performance of such drill shall be furnished to the Director or the nominated authority, as the case may be.

(5) No person shall tamper with, or alter, or remove, or cause any injury or damage to, any fire prevention or fire safety equipment installed in any such building or part thereof or instigate any other person to do so.

17. Section 11(J) of the West Bengal Fire Services Act state as follows :-

Section 11J. Penalty for contravention of provisions of Chapter IIIA.-Whoever contravenes any provision of Chapter IIIA or the rules made thereunder or fails to comply with any requisition lawfully made to him under any provision of Chapter IIIA or the rules made thereunder shall, without prejudice to any other action that may be taken against him under section 36 or section 37, be punishable with imprisonment for a term of three years which may extend to five years or with fine of twenty thousand rupees which

may extend to five lakh rupees or with both and, where the offence is a continuing one, with a further fine of one thousand rupees which may extend to ten thousand rupees for every day during which such offence continues after the conviction for the first such offence.

18. Section 11(L) of the West Bengal Fire Services Act state as follows :-

Section 11 (L).Offences cognizable and non-cognizable. –

All offences punishable under this Chapter shall be cognizable and non-bailable.

19. Section 33 of the West Bengal Fire Services Act state as follows :

Section 33. Offences by companies.-(1) *Where an offence under this Act has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly :*

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other office of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation. For the purposes of this section,-

(a) "company" means a body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm.

20. In **K.K. Ahuja v. V.K. Vora**² the Hon^{ble} Supreme Court discussed the principles of the vicarious liability of the officers of a company in respect of dishonour of a cheque and held: -

“27. The position under Section 141 of the Act can be summarised thus: (i) If the accused is the Managing Director or a Joint Managing Director, it is not necessary to make an averment in the complaint that he is in charge of, and is responsible to the company, for the conduct of the business of the company. It is sufficient if an averment is made that the accused was the Managing Director or Joint Managing Director at the relevant time. This is because the prefix 2 (2009) 10 SCC 48 –Managing|| to the word –Director|| makes it clear that they were in 2 (2009)10 SCC 48 [9] charge of and are responsible to the company, for the conduct of the business of the company.

(ii) In the case of a Director or an officer of the company who signed the cheque on behalf of the company, there is no need to make a specific averment that he was in charge of and was responsible to the company, for the conduct of the business of the company or make any specific allegation about consent, connivance or negligence. The very fact that the dishonoured cheque was signed by him on behalf of the company, would give rise to responsibility under subsection (2) of Section 141.

(iii) In the case of a Director, secretary or manager [as defined in Section 2(24) of the Companies Act] or a person referred to in clauses (e) and (f) of

² (2009)10 SCC 48

Section 5 of the Companies Act, an averment in the complaint that he was in charge of, and was responsible to the company, for the conduct of the business of the company is necessary to bring the case under Section 141(1) of the Act. No further averment would be necessary in the complaint, though some particulars will be desirable. They can also be made liable under Section 141(2) by making necessary averments relating to consent and connivance or negligence, in the complaint, to bring the matter under that sub-section.

(iv) Other officers of a company cannot be made liable under sub-section (1) of Section 141. Other officers of a company can be made liable only under subsection (2) of Section 141, by averring in the complaint their position and duties in the company and their role in regard to the issue and dishonour of the cheque, disclosing consent, connivance or negligence.”

21. In **Pooja Ravinder Devidasani v. State of Maharashtra and Anr.**³ the Hon^{ble} Supreme Court held as under:-

“To fasten vicarious liability under Section 141 of the Act on a person, at the material 3 (2014) 16 SCC 1 time that person shall have been at the helm of affairs of the company, one who actively looks after the day-to-day activities of the company and is particularly responsible for the conduct of its business. Simply because a person is a Director of a company, does not make him liable under the NI Act. Every person connected with the Company

³ (2014)16 SCC 1

will not fall into the ambit of the provision. Time and again, it has been asserted by this Court that only those persons who were in charge of and responsible for the conduct of the business of the Company at the time of commission of an offence will be liable for criminal action. A Director, who was not in charge of and was not responsible for the conduct of the business of the Company at the relevant time, will not be liable for an offence under Section 141 of the NI Act. In National Small Industries Corpn. [National Small Industries Corpn. Ltd. v. Harmeet Singh Paintal, (2010) 3 SCC 330 : (2010) 1 SCC (Civ) 677 : (2010) 2 SCC (Cri) 1113] this Court observed: (SCC p. 336, paras 13-14) —13. Section 141 is a penal provision creating vicarious liability, and which, as per settled law, must be strictly construed. It is therefore, not sufficient to make a bald cursory statement in a complaint that the Director (arrayed as an accused) is in charge of and responsible to the company for the conduct of the business of the company without anything more as to the role of the Director. But the complaint should spell out as to how and in what manner Respondent 1 was in charge of or was responsible to the accused Company for the conduct of its business. This is in consonance with strict interpretation of penal statutes, especially, where such statutes create vicarious liability.

A company may have a number of Directors and to make any or all the Directors as accused in a complaint merely on the basis of a statement that they 3 (2014)16 SCC 1 [11] are in charge of and

responsible for the conduct of the business of the company without anything more is not a sufficient or adequate fulfilment of the requirements under Section 141."

22. In **Girdhari Lal Gupta v. D.H. Mehta**⁴, the Hon'ble Supreme Court observed that,

"a person —in charge of a business|| means that the person should be in overall control of the day-to-day business of the Company.

19. A Director of a company is liable to be convicted for an offence committed by the company if he/she was in charge of and was responsible to the company for the conduct of its business or if it is proved that the offence was committed with the consent or connivance of, or was attributable to any negligence on the part of the Director concerned (see State of Karnataka v. Pratap Chand [State of Karnataka v. Pratap Chand, (1981) 2 SCC 335 : 1981 SCC (Cri) 453]).

20. In other words, the law laid down by this Court is that for making a Director of a company liable for the offences committed by the company under Section 141 of the NI Act, there must be specific averments against the Director showing as to how and in what manner the Director was responsible for the conduct of the business of the company."

23. In **Dayle De'souza Vs. Government of India Through Deputy Chief Labour Commissioner (c) and Anr.**⁵, the Hon'ble Supreme Court observed that,

⁴ (1971)3 SCC 189

“The legal position has undergone further elucidation in a number of judgments. However, for the present decision, we would refer to the summarisation in National Small Industries Corporation Limited v. Harmeet Singh Paintal⁶, to the following effect:

“39. From the above discussion, the following principles emerge:

- (i) The primary responsibility is on the complainant to make specific averments as are required under the law in the complaint so as to make the accused vicariously liable. For fastening the criminal liability, there is no presumption that every Director knows about the transaction.*
- (ii) Section 141 does not make all the Directors liable for the offence. The criminal liability can be fastened only on those who, at the time of the commission of the offence, were in charge of and were responsible for the conduct of the business of the company.*
- (iii) Vicarious liability can be inferred against a company registered or incorporated under the Companies Act, 1956 only if the requisite statements, which are required to be averred in the complaint/petition, are made so as to make the accused therein vicariously liable for offence committed by the company along with averments in the petition containing that the accused were in charge of and responsible for the business of the company and by virtue of their position they are liable to be proceeded with.*
- (iv) Vicarious liability on the part of a person must be pleaded and proved and not inferred.*
- (v) If the accused is a Managing Director or a Joint Managing Director then it is not necessary to make specific averment in*

⁵ 2021 SCC OnLine SC 1012

⁶ (2010) 3 SCC 330

the complaint and by virtue of their position they are liable to be proceeded with.

- (vi) *If the accused is a Director or an officer of a company who signed the cheques on behalf of the company then also it is not necessary to make specific averment in the complaint.”*

24. However, in **Dr. Mani Kumar Chhetri Vs. State of West Bengal**, the Hon’ble High Court at Calcutta has observed that,

“49. Duty of care of the Board of Directors of a company including that of its Managing Director is one of general supervision over the management of a company and not a direct ‘hands on’ role in the day to day affairs of each department of the said company, more particularly when the affairs of such department was of a specialized nature and had been delegated to other Managers and/or officers in the company hierarchy.

50. As per the materials on record the management of the Fire Services department of the hospital had been delegated to other accused persons, namely, Sanjib Pal, [Manager (Maintenance)], Preeta Banerjee, [AVP (Administration)] and Dr. S. Upadhyay [Senior VP (Project)] who were in charge of said department in the hospital. Furthermore, it has come to light that it was accused Sanjib Pal, [Manager (Maintenance)] who took the decision to implement a dangerous in-house policy ‘Code Brown’ in the hospital which had a devastating impact on the fateful night as the personnel attached to the Fire Safety department of the hospital lost valuable time in their futile attempts to control the fire through inept and inefficient in-house mechanism without taking recourse to the external fire-fighting agencies. It also appears that ‘Code Brown’ was strictly implemented by Preeta Banerjee and an employee was suspended for faulting the same. Although the petitioner as the Managing Director being aware of this inherently dangerous practice

introduced by the managers-in-charge of the fire safety department, and other culpable deficiencies had failed and/or neglected to introduce corrective measures to pre-empt the disaster, such gross breach of due care in the supervision of the affairs of the hospital would not make him directly accountable for specialized decisions and/or day to day management in the domain of fire control and safety which had been specifically deputed to other accused persons.

51. The nature of duty entrusted to the Board of Directors including the petitioner in the company hierarchy, wherein the running and maintenance of the fire department had been specifically delegated to the subordinate management and/or officers, must be borne in mind while assessing the issue as to whether they may be attributed with the knowledge that their acts were likely to claim the lives of numerous patients.”

25. In the instant case, the petitioner acting in the capacity of Joint President cannot be considered to be empowered to accredit constructive policy decision which remains within the exclusive domain of the person in-charge of and responsible for the conduct of the business of the company. A person designated as Joint President is either entrusted to pursue certain delegatory function or execute the direction of the authority powerful to the extent of controlling decision making and directing the subordinate to profess their distinctive duties and responsibilities, being in predominant charge of and responsible to the company for the conduct of the business of the company.
26. The Learned Advocate for the State submitted Kothari Medical Centre commenced the functioning of the hospital after construction without seeking any N.O.C from the Fire Service Department. Such lapse on the part of the company cannot be attributed to an individual employed as an officer of the company. It is one of the policy decisions to have been abided by the functionaries of the company in absolute charge of it.

27. Section 2(id) of the West Bengal Fire Service Act states as follows:-

“occupier” means a person living in, or otherwise using, any land or building owned by him, or a person who, for the time being, is paying, or is liable to pay, to the owner the rent or fee, or is making, or is liable to make, contractual payment to the owner for adjustment of rent or fee, or damages, or any portion thereof, on account of occupation of any land or building, and includes a rent-free tenant;

28. Section 2(ie) of the West Bengal Fire Service Act states as follows:-

“owner” means a person who, for the time being, is receiving the rent of any land or building or any part of any land or building, either on his own account or as an agent of a person, or trustee for a society for any religious or charitable purpose, or as a receiver who would receive such rent if the land or the building or any part thereof were let to a tenant;

29. Apart from the violations enumerated in the complaint, the specific role performed by the petitioner to his disservice and to the detriment of Kothari Medical Centre acting in contravention of the delegatory powers had not been chronicled, to prejudice the occupiers of the aforesaid Medical Centre. The complaint is devoid of the averment of the involvement of the petitioner to have been solitarily or in conjunction with the co-accused responsible for the infringements. The characteristics and the extent of duties and responsibilities conferred and entrusted to the petitioner have not been elaborately categorized. The petitioner has not

been the owner or the occupier in consonance with the definition under Sections 2(ie) and 2(id) of the said Act respectively.

30. Kothari Medical Centre was not impleaded in the instant case. The petitioner was not the Director of the aforesaid Medical Centre when the elucidated violations were committed.

31. The charge-sheet did not implicate the said Medical Centre, or denote the owner and/or the occupier of the said building in question to attract the provisions under the said Act for indictment thereby the scope of the rudimentary element of vicarious liability was nugatory. The petitioner cannot be under such circumstances be vicariously liable to be an offender.

32. On inspection the concerned Fire Service Authorities found the following violations:-

- (i) *“The basement is using as store of different combat combustible materials in addition to that basement is also using as A.C. Plant area, laundry room and linen room. This has increase the risk of fire.*
- (ii) *No fire alarm cum detention system, sprinkler system has found in the basement as a fire protection measures. Therefore, the risk as identified in the basement has remained unprotected.*
- (iii) *Detectors has found in corridors of all floors of the building. But authority has ignored to install the detection system in other floor areas i.e. I.C.C.U. Operation Theatre Room, I.T. Unit, Patient Ward, Pharmacy Store, Linen Store and other store & kitchen room, administrative offices.*
- (iv) *The yard hydrant & wet system has found installed with only one diesel driver, fire pump. But there is no auto start facility. It is also found that main pump with jockey pump as specified in National Building Code has not been installed. Installation of main pump and jockey pump with auto start facility is mandatory requirement.*

- (v) *The hospital authority using L.P.G. cylinder and town gas in the kitchen without having Fire License, this is in contravention of Section 12 of the aforesaid Act.*
- (vi) *Fire & Smoke chef door has not been provided at the staircase lobby in each floor level to restrict the spread of smoke and heat during fire situation.*
- (vii) *Public Address System has found defunct.*
- (viii) *Air handling unit not provided with fire damper and which will encourage the spread of smoke during the fire situation.*
- (ix) *Electrical ducts not sealed in every alternative floor level, which will also encourage the spread of smoke during fire situation.*
- (x) *Emergency evacuation plan/fire order is not available.”*

33. Conjoint reading of the provision of Section 11C of the said Act and the violations on behalf of the company demonstrate certain omissions and inadequacies in the measures opted by the aforesaid Medical Centre with regard to installation, functioning and preservation of the Fire Safety Mechanism. Absolute non-adherence and willful neglect to commission Fire Safety measure from the inception cannot be militated. Moreover the issuance of notice under Section 35 of the said Act, before initiation of prosecution under Section 11J by 11L of the said Act was not complied with. The Charge-Sheet no. 75/13 inter alia stated that *“during investigation, documents were provided from the Fire safety Authority which reflects the violation under Section 11C, West Bengal Fire Services Act. In course of investigation also received a ‘No Objection Certificate’ regarding Fire Safety Installation from Authority attached in case diary. However, a prima facie case under Section 11J/11L, West Bengal Fire Services Act have been established against the m/n. two accused persons who are averting arrest and process may be applied for the same.”*

34. The complainant vide a letter dated 08.03.2013 has granted N.O.C to Kothari Medical Centre, which is replicated as follows:

"MEMO. No. : WBFES/ADG/206/13

DATED: 08/03/2013

*From : The OSD & Superior Nominated Authority
West Bengal Fire & Emergency Services*

*To : Dr. N.K.Ray
Medical Superintendent
Kothari Medical Centre
8/3, Alipore Road, Kolkata – 700027*

*Subject : Your prayer for N.O.C for the existing Hospital Building at premises
No. – 8/3, Alipore Road, Kolkata – 700027*

Ref : Your letter dated – 31.01.2013

The undersigned is directed to inform you that your prayer regarding N.O.C is considered and accordingly your premises was inspected for checking and testing of each Fire Safety installations so far incorporated. Being satisfied with the performance of the Fire Safety Installations both passive and active, the N.O.C in question is considered in favour of your premises.

In this connection, certain modification, addition & alteration of sprinkler installation, detection & alarm system including mechanical ventilation for efficient smoke management as suggested during last inspection should be completed strictly with 31st March, 2013.

In addition to the above you are requested to supervise the following schedule for proper maintenance and to ensure the Life Safety of occupiers.

- 1. The management of the organization /buildings as the case may be shall maintain the fire prevention and fire safety measures provided in the buildings/premises in good repair and in efficient condition at all times for use by their staff/member of the organization or Fire Services or both in the event of outbreak of fire/other emergencies.*
- 2. All the members of the organization, both medical and non-medical staff, security staff shall be conversant with all the Fire Prevention and Fire Safety Measures of the building/premises to enable them to operate in the event of any fire emergency.*
- 3. Fire Safety Audit and Electrical Safety Audit shall be conducted at a regular interval and shall be recorded in the Fire Prevention Maintenance Register.*

4. A crew of trained fire men under an experienced officer shall be engaged round the clock for safety of the building.
5. Evacuation drill and fire drill shall be performed at regular interval involving all the occupants of the building.

The Head of the Organization shall submit a declaration to the Director General, West Bengal Fire & Emergency Services on every 1st April, 1st July, 1st October & 1st January maintaining financial calendar that, "The Fire Prevention and Fire Safety Measures in the building or premises have been tested and are in good working condition. That, no material changes has been done in the building that has affected the means of escape and means of access as the case may be. That, all the members of the organization are well conversant with the evacuation drill and mentally and physically fit to combat the fire emergencies. That, any deviation in the above and failure in maintenance of the Fire Prevention and Fire Safety Measures shall at the risk and liability of the Head of the Organization."

OSD & Superior Nominated Authority
West Bengal Fire & Emergency Services"

35. A copy of the N.O.C as stated above was forwarded to the Officer-in-Charge, Alipore Police Station on the same date in the following manner:

" KOTHARI MEDICAL CENTRE

KMC/ADMIN/VP/1-2013

DATE: 08.03.2013

**The Officer-in-charge
Alipore Police Station
Kolkata**

Sub: N.O.C. from WBFE&S, Govt. of West Bengal, Kolkata

Dear Sir,

Enclosed a copy of the NOC dated 08.03.2013 issued by The OSD & Superior Nominated Authority, West Bengal Fire and Emergency Services, for your information and necessary action.

Thank you.

Yours faithfully

For KOTHARI MEDICAL CENTRE

K.K.BISWAS

Vice-President”

36. Such grant of N.O.C as aforesaid by the West Bengal Fire and Emergency Services prior to the submission of the charge-sheet during the course of investigation connote approval being accorded to the said Medical Centre obliterating the violations as denoted, which were rectified as mentioned in the aforesaid N.O.C. The N.O.C was granted on 08.03.2013 prior to the submission of charge-sheet on 07.04.2013 granting legal sanction on satisfaction with further advice concerning steps to be processed in future, signifying ratification of the compliance of omissions on the part of Kothari Medical Centre eliminating the scope of criminality leading to indictment of parties concerned.

37. In view of the above discussions, C.G.R Case No. 4730 of 2011, under Sections 11J/11L of the West Bengal Fire Service Act, pending before the Court of the Learned Chief Judicial Magistrate, South 24 Parganas at Alipore, arising out of Alipore Police Station Case No. 388 dated 23rd December, 2011 is quashed.

38. The criminal revisional application being no. 1357 of 2013 is allowed.

39. Accordingly, CRR 1357 of 2013 stands disposed of. Connected application, if there be any, also stands disposed of,

40. There is no order as to cost.

41. Let the copy of this judgment be sent to the Learned Trial Court as well as the police station concerned for necessary information and compliance.

42. All parties shall act on the server copy of this judgment duly downloaded from the official website of this court.

(Ananya Bandyopadhyay, J.)